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No. 06-1717

IN THE

Supreme Court of the United States

Richlin Security Service Co.,
Petitioner,

v.

Michael Chertoff,
Secretary of Homeland Security.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Federal Circuit

BRIEF *AMICI CURIAE* OF NATIONAL ASSOCIATION OF LEGAL ASSISTANTS AND PARALYZED VETERANS OF AMERICA IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Under the Equal Access to Justice Act (EAJA), 5 U.S.C. § 504(a)(1) and 28 U.S.C. § 2412(d)(1)(A), may a prevailing party be awarded attorney fees for paralegal services at the market rate for such services, as four circuits have held, or does EAJA limit reimbursement for paralegal services to cost only, as the Federal Circuit panel majority below held?

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
BRIEF *AMICI CURIAE* 1
INTEREST OF THE *AMICI CURIAE* 1
SUMMARY OF THE ARGUMENT 3
ARGUMENT 4
CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Agosto v. Nicholson, No. 04-0431(E), 2007 U.S. App. Vet. Claims LEXIS 1121 (Vet. App. July 13, 2007) 13

Brungardt v. Comm'r of Social Security, No. 06-15681, 2007 U.S. App. LEXIS 11217 (11th Cir. May 9, 2007) 13

Commissioner v. Jean, 496 U.S. 154 (1990) 7, 13

Dudelson v. Barnhart, No. 03 Civ. 7734 (RCC) (FM), 2007 U.S. Dist. LEXIS 19124 (S.D.N.Y. Mar. 20, 2007) 13

Former Employees of Tyco Elecs., Fiber Optics Div. v. United States Dep't of Labor, 350 F. Supp. 2d 1075 (C.I.T. 2004) 9, 13

Healey v. Leavitt, 485 F.3d 63 (2d Cir. 2007) 13

In re Donovan, 877 F.2d 982 (D.C. Cir. 1989) (per curiam) 8, 13

Jazz Photo Corp. v. United States, No. 04-00494, 2007 Ct. Intl. Trade LEXIS 107 (C.I.T. July 16, 2007) 13

Jean v. Nelson, 863 F.2d 759 (11th Cir. 1988), *aff'd on other grounds, Commissioner v. Jean*, 496 U.S. 154 (1990) 7

Joyce v. Potter, No. 5:06-cv-339-Oc-10GRJ, 2007 U.S. Dist. LEXIS 51115 (M.D. Fla. July 16, 2007) 13

Kunz Constr. Co. v. United States, 16 Cl. Ct. 431 (1989), *aff'd mem.*, 899 F.2d 1227 (Fed. Cir. 1990) 10

Lambert v. Nicholson, No. 04-815(E), 2006 WL 2619658 (Vet. App. Sept. 7, 2006) 9

League of Wilderness Defenders-Blue Mountains Biodiversity Project v. Smith, 491 F. Supp. 2d 980 (D. Or. May 17, 2007) 13

London v. Halter, 134 F. Supp. 2d 940 (E.D. Tenn. 2001) 9

Masonry Masters, Inc. v. Nelson, 105 F.3d 708 (D.C. Cir. 1997) 13

McKay v. Barnhart, 327 F. Supp. 2d 263 (S.D.N.Y. 2004) 9

Missouri v. Jenkins, 491 U.S. 274 (1989)..... passim
Nickola v. Barnhart, No. 03-C-622-C, 2004 WL 2713075 (W.D. Wis. Nov. 24, 2004)..... 12
Role Models Am., Inc. v. Brownlee, 353 F.3d 962 (D.C. Cir. 2004)..... 10
Sandoval v. Apfel, 86 F. Supp. 2d 601 (N.D. Tex. 2000)..... 8, 11
Spectrum Leasing Corp. v. GSA, 93-1 B.C.A. (CCH) P25,317, 1992 GSBCA LEXIS 279 (July 27, 1992)..... 6
Teixeira v. Nicholson, 2006 U.S. App. Vet. Claims LEXIS 295 (Vet. App. Apr. 4, 2006)..... 12
Wilson v. Barnhart, No. 1:06CV00062, 2006 WL 3455071 (W.D. Va. Nov. 30, 2006)..... 12

Statutes

28 U.S.C. § 2412(d)(1)(A)..... i
28 U.S.C. § 2412(d)(2)(A)(ii))..... 9
36 U.S.C. § 170101..... 2
42 U.S.C. § 1988..... 8, 9
5 U.S.C. § 504(a)(1)..... i

Other Authorities

ABA Model Guideline 2 for the Utilization of Paralegal Services cmt., *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#5 (visited July 23, 2007)..... 4
ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Improve Your Practice*, *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#role (visited Aug. 13, 2007)..... 4, 5, 6, 7
Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook, 2006-07 Edition*, Paralegals and Legal Assistants, *available at* http://www.bls.gov/oco/ocos114.htm (visited July 10, 2007)..... 5

N.J. Committee on Professional Ethics Op. 647 N.J.L.J. 1525 (1990) 5

Nat'l Ass'n of Legal Assistants, 2004 National Utilization and Compensation Survey Report tbl. 3.5, *available at* www.nala.org/Survey_Table.htm (visited June 21, 2007) 9

Nat'l Ass'n of Legal Assistants, *Background and Definition*, *available at* http://www.nala.org/whatis.htm (visited July 23, 2007) 4

Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, *available at* http://www.nala.org/whatis.htm (visited July 23, 2007) 4, 5, 7

Nat'l Federation of Paralegal Ass'ns, *Paralegal Roles and Responsibilities*, *available at* http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=699 (visited June 21, 2007) 11

Statement of Ryan W. Bounds, Chief of Staff, Office of Legal Pol'y, Dep't of Justice, Before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, U.S. House of Reps., Concerning H.R. 435, the Equal Access to Justice Reform Act (May 23, 2006) 9

United States Attorney's Office for the District of Columbia, Laffey Matrix 2003-2006, *available at* http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_ Matrix_5.html (visited July 10, 2007) 10

BRIEF *AMICI CURIAE*

INTEREST OF THE *AMICI CURIAE*[1]

1. The **National Association of Legal Assistants (NALA)** is a professional association offering continuing education and professional development programs for paralegals throughout the nation.[2] NALA was established in 1975 as a nonprofit organization under IRS code 501(c)(6). The Association is composed of 6000 individual members and over 90 state and local affiliated associations, representing another 10,000 paralegals. Detailed information about the association may be found on the Web at www.nala.org.

NALA has served as a leader in the development of the paralegal profession by supporting continuing education of paralegals and providing ethical guidelines. In 1975, NALA members adopted the first Code of Ethics and Professional Responsibility for paralegals to serve as a guide for the proper conduct of paralegals in their day-to-day activities. In 1984, NALA members adopted its Model Standards and Guidelines for Utilization of Legal Assistants to serve as a guide for paralegals and supervising attorneys by describing the role of paralegals in the delivery of legal services. The Model is based on research of state-bar-association-adopted guidelines, ethics opinions, and case law related to paralegal utilization. NALA has conducted a nationwide utilization and compensation survey every two to three years since 1986, and survey findings are submitted regularly to the Department of Labor.

In 1989, NALA filed an *amicus curiae* brief in *Missouri v. Jenkins*, 491 U.S. 274 (1989). In the brief, NALA asserted

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[1] No person other than the *amici* and their counsel participated in the writing of this brief or made a financial contribution to the brief. Letters signifying the parties' consent to the filing of this brief are on file with the Court.

[2] In recent years, NALA has found that the term "paralegal" is a preferred term in certain geographic areas; in some states, "legal assistant" is falling by the wayside. This brief uses the terms "legal assistant" and "paralegal" interchangeably.

that paralegals are a recognized and desirable addition to the modern law office. The delegation of work to a skilled paralegal reduces the cost of legal services to the client and increases attorney efficiency and productivity. Today, the contribution and value of paralegals to cost-effective delivery of legal services is indisputable, and recognized even more so than it was in 1989. The paralegal occupation was then and continues to be designated as one of the fastest-growing occupations in the United States. When the brief was filed in 1989, there were an estimated 53,000 paralegals (as of 1984); and a projection of 104,000 by 1995. Today, the Bureau of Labor Statistics estimates that over 200,000 paralegal jobs are held in the United States. The use of paralegals continues to be promoted and encouraged when compensated at market rate as part of court-awarded attorney's fees. In addition, the public interest is served by encouraging attorney use of paralegals when possible and practical.

2. The **Paralyzed Veterans of America ("PVA")** is a national nonprofit organization chartered by the U.S. Congress. *See* 36 U.S.C. § 170101 et seq. Membership in PVA is limited to American citizens who are veterans of the U.S. Armed Forces and have a spinal cord injury or disease. PVA has over 20,000 members, the vast majority of whom use a wheelchair for mobility. The congressionally mandated objects and purposes of the organization include: acquainting the public with the needs and problems of paraplegics; promoting medical research regarding injuries to and diseases of the spinal cord and to advocate for and to foster various programs on behalf of members and other individuals with spinal cord injury or disease. In connection with its mission and programs, PVA maintains an active practice at both the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Federal Circuit litigating cases involving veterans' benefits on behalf of its members and other veterans. The recovery of its legal fees and expenses under the Equal Access to Justice Act in those cases in which the government position is found to not be substantially justified allows PVA

to continue with this important effort on behalf of its members and other veterans. PVA is also involved in litigation from time to time in various civil rights and disability matters involving other similar fee-shifting statutes which may be adversely impacted by the decision. Therefore, PVA has a vital interest in ensuring that the Equal Access to Justice Act and other similar fee-shifting statutes are interpreted consistent with their primary purpose to ensure that the expenses involved in litigation do not deter veterans and others with disabilities from seeking the vindication of their rights.

SUMMARY OF THE ARGUMENT

Certiorari is warranted to review the Federal Circuit's holding that, in cases involving awards under the Equal Access to Justice Act (EAJA), fees for legal assistants should be reimbursed only at cost, rather than according to prevailing market rates. In light of the Federal Circuit's outsized role in EAJA cases, the decision presents an important question of law that may affect EAJA awards in a broad spectrum of cases. The decision below also fails to account for the fact that, even more so now than at the time of this Court's 1989 decision in *Missouri v. Jenkins*, the use of legal assistants is an integral part of the practice of law that allows higher-quality legal services to be provided to clients on a more cost-effective basis. Moreover, because the fees for legal assistants are overwhelmingly billed separately to clients, they should be reimbursed under EAJA at prevailing market rates for the same reasons underlying this Court's holding in *Jenkins* with regard to fees under Section 1988: reimbursement at market rates will encourage the "cost-effective delivery of legal services" and will further the policies underlying the EAJA "by reducing the spiraling cost" of litigation. The panel's supposition that allowing reimbursement at market rates might somehow result in "a less efficient performance of legal services" is simply misplaced.

ARGUMENT

I. The Use of Legal Assistants Has Become An Integral Part of Modern Law Practice.

Beginning in the late 1960s, attorneys began to seek "ways to improve the efficient and cost effective delivery of legal services." Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, *available at* http://www.nala.org/whatis.htm (visited July 23, 2007). One response to these efforts came in the form of the growing use of legal assistants (also known as paralegals, *see supra* note 2) to perform tasks that often would otherwise be undertaken by attorneys at a greater cost to the client. The American Bar Association and National Association of Legal Assistants thus have described legal assistants as persons "qualified by education, training or work experience who [are] employed or retained by a lawyer, law office, corporation, governmental agency or other entity [and] who perform[] specifically delegated substantive legal work for which a lawyer is responsible."[3] Such substantive legal work may include, for example, "attending client conferences, corresponding with and obtaining information from clients, witnessing the execution of documents, preparing transmittal letters, and maintaining estate/guardianship trust accounts."[4] Under the supervision of an attorney, legal assistants may also be responsible for locating and interviewing witnesses, conducting investigations and statistical research, conducting legal research, drafting legal documents and

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[3] *See* Nat'l Ass'n of Legal Assistants, *Background and Definition*, *available at* http://www.nala.org/whatis.htm (visited July 23, 2007) (noting that NALA has adopted ABA definition).

[4] ABA Model Guideline 2 for the Utilization of Paralegal Services cmt., *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#5 (visited July 23, 2007).

pleadings, and summarizing depositions, interrogatories, and testimony.[5]

Performing the tasks described above, legal assistants have – as the New Jersey Committee on Professional Ethics has explained – become "accepted, acceptable, important and indeed, necessary to the practice of law." N.J. Committee on Professional Ethics Op. 647, 126 N.J.L.J. 1525 (1990). In 2004, paralegals and legal assistants held over two hundred thousand jobs, primarily in private law firms but also in corporate legal departments and the government; the number of paralegal and legal assistant jobs is expected to grow by twenty-seven percent or more through 2014.[6]

This widespread use of paralegals and legal assistants allows legal services to be performed more cost-effectively, as paralegals and legal assistants "handle many tasks (under an attorney's supervision) that would otherwise be performed by an attorney" at higher rates.[7] ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Im-*

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[5] Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, *available at* http://www.nala.org/whatis.htm (visited June 12, 2007).

[6] Bureau of Labor Statistics, U.S. Dep't of Labor, *Occupational Outlook Handbook, 2006-07 Edition*, Paralegals and Legal Assistants, *available at* http://www.bls.gov/oco/ocos114.htm (visited July 10, 2007).

[7] ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Improve Your Practice*, *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#role (visited Aug. 13, 2007); *see also* Arthur G. Greene & Therese A. Cannon, *Paralegals, Profitability, and the Future of Your Law Practice* fig. 2.1 (2003), *reprinted at* http://www.abanet.org/legalservices/paralegals/lawyers.html (visited July 30, 2007) (providing example of significant savings to client by delegating work such as legal research, reviewing documents, interviewing witnesses, and drafting pleadings to a legal assistant).

prove Your Practice, *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#role (visited Aug. 13, 2007). Moreover, the use of legal assistants also enhances the quality of legal representation by allowing attorneys to allocate their more expensive time to the most important aspects of a matter.

II. Fees For Legal Assistants Are Overwhelmingly Billed Separately to Clients and Thus Should Be Reimbursed at Market Rates Under EAJA.

1. In 1989, this Court observed in *Missouri v. Jenkins* that separate billing for paralegal services "appears to be the practice in most communities today." 491 U.S. at 289; *see also id.* at 289 n.11 (noting that "77 percent of 1,800 legal assistants responding to a survey of the . . . membership [of the National Association of Legal Assistants] stated that their law firms charged clients for paralegal work on an hourly billing basis"). Three years later, one board of contract appeals – reviewing a claim for EAJA fees – confirmed that the practice of billing for paralegal services at a market rate was widespread, noting both that the government had failed to offer anything "for the record which suggests that the prevailing practice in the metropolitan Washington area is for attorneys not to bill for paralegal services at the going market rate" and that, "[o]n the contrary, in processing multiple cost claims in conjunction with the exercise of our protest jurisdiction, we are left with the understanding that the prevailing practice in this area is, in fact, to bill at market rates." *Spectrum Leasing Corp. v. GSA*, 93-1 B.C.A. (CCH) P25,317, 1992 GSBCA LEXIS 279, at *30-*31 (July 27, 1992).

Eighteen years after this Court's decision in *Jenkins*, the practice of separate billing for paralegal time not only continues, but is entrenched and widely encouraged. For example, the American Bar Association's Standing Committee on Paralegals specifically instructs attorneys that a "paralegal's substantive legal work (i.e., not clerical work) may be billed directly to the client just as an attorney's work is billed, or con-

sidered in setting a flat fee just as an attorney's work would be."[8] In *Jenkins*, this Court reasoned that when

> the prevailing practice is to bill paralegal work at market rates, treating civil rights lawyers' fee requests in the same way . . . makes economic sense. By encouraging the use of lower cost paralegals rather than attorneys wherever possible, permitting market-rate billing of paralegal hours "encourages cost-effective delivery of legal services and, by reducing the spiraling cost of civil rights litigation, furthers the policies underlying civil rights statutes."

491 U.S. at 288. Indeed, this Court continued, "[t]o the extent that fee applicants under § 1988 are not permitted to bill for the work of paralegals at market rates, it would not be surprising to see a greater amount of such work performed by attorneys themselves, thus increasing the overall cost of litigation." *Id.* at 288 n.10.

As the Eleventh Circuit concluded in *Jean v. Nelson*, 863 F.2d 759 (1988), *aff'd on other grounds*, *Commissioner v. Jean*, 496 U.S. 154 (1990), the same reasoning applies equally to the EAJA. "To hold otherwise," the court of appeals emphasized, "would be counterproductive because excluding reimbursement for such work might encourage attorneys to handle entire cases themselves, thereby achieving the same results at a higher overall cost." 863 F.2d at 778.

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[8] ABA Standing Cmte. on Paralegals, *Information for Lawyers: How Paralegals Can Improve Your Practice*, *available at* http://www.abanet.org/legalservices/paralegals/lawyers.html#13 (visited July 10, 2007). *Accord* Nat'l Ass'n of Legal Assistants, *What Do Legal Assistants Do?*, *available at* http://www.nala.org/whatis.htm (visited June 12, 2007) ("Professionally, a paralegal's time for substantive legal work (as opposed to clerical or administrative work) is billed to clients much the same way as an attorney's time, but at a lower hourly rate.").

By contrast, as the D.C. Circuit has emphasized, the use of legal assistants to handle tasks that would otherwise be performed by an attorney at higher rates results not only in lower fees to the client but also in a lower request for reimbursement. *See In re Donovan*, 877 F.2d 982, 992-93 (D.C. Cir. 1989) (per curiam); *see also Sandoval v. Apfel*, 86 F. Supp. 2d 601, 609 (N.D. Tex. 2000) (in approving EAJA award that included fees for an experienced legal assistant in a Social Security case, emphasizing that it was "apparent from the record that [the paralegal] performed services—organizing the case, summarizing the administrative proceedings and medical evidence, and preparing the procedural history, statement of the case, and summary of medical evidence—that might otherwise have been undertaken by [the attorney of record] at a higher hourly rate, while consuming substantially the same amount of time").

2. The panel below nonetheless concluded that legal assistant fees should be reimbursed at cost, relying in part on its view that allowing recovery of paralegal fees at market rates would "create a perverse incentive." Pet. App. 18a. Specifically, the panel posited that fees for an attorney would be limited under EAJA to $125 per hour – "likely far less than his market rate" – while fees for legal assistants could be recovered "at or near the full market rate." *Id.* Thus, the court of appeals reasoned, "treating paralegal fees as attorney's fees would distort the normal allocation of work and result in a less efficient performance of legal services." *Id.*

The premises on which the panel relied in reaching this conclusion are flawed in at least three respects. First, although EAJA (unlike 42 U.S.C. § 1988, at issue in *Jenkins*) imposes a cap of $125 per hour on fees for an attorney (with additional adjustment for inflation available, *see* 28 U.S.C. § 2412(d)(2)(A)(ii)), in many areas of the country there is – as the petition notes, *see* Pet. 21 – scant evidence that rates for legal assistants are high enough to create the "perverse incentives" that the panel decries. To the contrary, EAJA fees for attorneys (when adjusted for inflation) are often compensated

at rates approaching $160 per hour,[9] *see, e.g.*, *Lambert v. Nicholson*, No. 04-815(E), 2006 WL 2619658 (Vet. App. Sept. 7, 2006) (EAJA award included attorney's fees reimbursed at rates of $153.38 and $154.31 per hour), while rates for legal assistants are generally – and often well – below $100 per hour,[10] *see McKay v. Barnhart*, 327 F. Supp. 2d 263, 270 (S.D.N.Y. 2004) (indicating in Social Security case that "the prevailing rate for paralegal services in the Southern District of New York is $75 per hour"); *see also London v. Halter*, 134 F. Supp. 2d 940, 944 (E.D. Tenn. 2001) (deeming $45 per hour to be "prevailing hourly rate for paralegal services in Social Security cases in the Eastern District of Tennessee"). Even the federal government's "Laffey matrix" (on which, the D.C. Circuit has held, parties may rely "as evidence of prevailing market rates for litigation counsel in the Washington, D.C. area") sets the 2005-2006 rate for parale-

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[9] Indeed, in opposing proposed legislation that would have lifted the statutory cap on EAJA attorney's fees, the government expressly emphasized that, in its experience, "courts routinely take advantage of EAJA's current discretionary authority to exceed the hourly rate cap." Statement of Ryan W. Bounds, Chief of Staff, Office of Legal Pol'y, Dep't of Justice, Before the Subcommittee on Courts, the Internet, and Intellectual Property, Committee on the Judiciary, U.S. House of Reps., Concerning H.R. 435, the Equal Access to Justice Reform Act, at 7 (May 23, 2006) (citing, *inter alia*, *Former Employees of Tyco Elecs. Fiber Optics Div. v. U.S. Dep't of Labor*, 350 F. Supp. 2d 1075, 1093 (C.I.T. 2004), in which court awarded attorney's fees at $158.70 for work performed in 2004), *available at* www.judiciary.house.gov/media/pdfs/bounds052306.pdf (visited Sept. 20, 2007).

[10] *See, e.g.*, Nat'l Ass'n of Legal Assistants, 2004 National Utilization and Compensation Survey Report tbl. 3.5, *available at* www.nala.org/Survey_Table.htm (visited June 21, 2007) (in 2004 nationwide survey of legal assistants, only thirty-eight percent reported a current billing rate greater than $90 per hour).

gals at $115 per hour – *i.e.*, below the $125-per-hour cap even without adjusting it for inflation.[11]

Moreover, even if the hourly rates for paralegals were to converge with the statutorily capped rate for attorneys, that fact – standing alone – would not militate against awarding fees for paralegals at their prevailing market rates. In an analogous case, the Court of Claims declined to reduce the rates for an associate attorney notwithstanding that, as a result of EAJA's statutory cap, such rates would approach those for partners working on the same case. In reasoning that applies fully to this case, the Court of Claims explained that it was "constrained to reduce the hourly rates . . . for partner time simply because those rates must be brought within the statutory cap. The same rationale," the Court continued, "would not apply to the rates sought for associate time since they are already at or below EAJA's . . . limit. Nothing in the legislative history suggests that Congress intended courts to preserve . . . proportionality in hourly rates when making EAJA fee awards." *Kunz Constr. Co. v. United States*, 16 Cl. Ct. 431, 439-40 (1989), *aff'd mem.*, 899 F.2d 1227 (Fed. Cir. 1990).

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[11] *See United States Attorney's Office for the District of Columbia*, Laffey Matrix 2003-2006, *available at* http://www.usdoj.gov/usao/dc/Divisions/Civil_Division/Laffey_Matrix_5.html (visited July 10, 2007).

Although the Department of Justice makes clear that the "matrix does not apply in cases in which the hourly rate is limited by statute[s]," such as Section 2412(d), the matrix is nonetheless instructive with regard to the prevailing market rates for paralegals. *Cf. Role Models Am., Inc. v. Brownlee*, 353 F.3d 962, 969-70 (D.C. Cir. 2004) (in concluding that appellant seeking EAJA award had not met its burden of justifying rates for legal assistants, court noted that appellant had neither "submitted . . . information about the prevailing market rate for law clerks and legal assistants in the Washington area, nor . . . referred to either of the two matrices that we have previously said litigants may rely upon when seeking fees").

In any event, the relevant question in interpreting the EAJA is not whether the rates for paralegals and attorneys may have converged or what economic incentives such a convergence might create, but instead whether Congress intended to permit market rate reimbursement for legal assistant services when it enacted and re-enacted the EAJA nearly three decades ago. Because – as the petition explains (at 20-21) – the prevailing market rates for paralegals during the early 1980s were well below the statutory cap, there was no reason for Congress to believe (and thus no reason for courts interpreting the EAJA to consider) that the two sets of rates might eventually converge.

Second, contrary to the assumption of the court of appeals, there is no reason to believe that the increased use of legal assistants will always result in the "less efficient performance of legal services." In response to a "demand for expertise," legal assistants have increasingly "develop[ed] knowledge and skills in highly technical or specialized subject areas." Nat'l Federation of Paralegal Ass'ns, *Paralegal Roles and Responsibilities*, *available at* http://www.paralegals.org/displaycommon.cfm?an=1&subarticlenbr=699 (visited June 21, 2007). When reviewing requests for EAJA reimbursement for legal assistants who specialize in a particular area of the law, district courts have expressly acknowledged that an attorney "is not necessarily able to" accomplish the tasks performed by legal assistants "in less time than it takes an experienced paralegal to do so." *Sandoval v. Apfel*, 86 F. Supp. 2d 601, 609 & n.12 (N.D. Tex. 2000) (approving EAJA award that included market rate for legal assistant with "extensive experience performing paralegal work in social security disability litigation").

Third, to the extent that in some cases legal assistants may require more hours than an attorney to accomplish a particular task, the disparity between the hourly rates for an attorney and those of a legal assistant means that the use of legal assistants will remain cost-effective, as courts considering EAJA requests have repeatedly recognized. *See Nickola v.*

Barnhart, No. 03-C-622-C, 2004 WL 2713075, at *1 (W.D. Wis. Nov. 24, 2004) (granting EAJA award for 33.15 hours of attorney time at $148.75 per hour and 44.2 hours of paralegal/law clerk time at $95 per hour and noting that "[a]lthough it might have taken more time for a law clerk to draft a brief than had an attorney drafted it, overall the use of law clerks in this case appears to have been a money-saving measure because it reduced the amount of time the attorney spent on the case").

Indeed, the cost benefits of using legal assistants are so well-recognized that some courts have in fact reduced EAJA awards seeking reimbursement for attorney time for tasks that they regard as more properly performed by law clerks or legal assistants. In *Wilson v. Barnhart*, No. 1:06CV00062, 2006 WL 3455071, at *1 (W.D. Va. Nov. 30, 2006), the district court explained that, just as "[i]t is proper to award a reduced hourly rate under the EAJA for nonattorney time spent by paralegals, law clerks, and law students 'on the theory that their work contributed to their supervising attorney's work product, was traditionally done and billed by attorneys, and could be done effectively by nonattorneys under supervision for a lower rate, thereby lowering overall litigation costs,'" "it is not proper to award a full attorney rate for activities that should more effectively be performed by nonlawyers," *id.* (citations omitted) (in Social Security case, reducing EAJA award from 15.25 hours at $125 per hour for attorney time to eight hours of attorney time (at $125) and four hours of nonattorney time at $75 per hour).

In any event, the answer to any perceived inefficiencies resulting from the use of legal assistants is not to deny reimbursement at market rates altogether, but instead for courts to follow the same practice that they do with other aspects of EAJA requests – *i.e.*, scrutinize the qualifications of legal assistants and requests for reimbursement of legal assistant fees and reduce any awards as necessary to account for such inefficiencies. *See, e.g.*, *Teixeira v. Nicholson*, 2006 U.S. App. Vet. Claims LEXIS 295 (Vet. App. Apr. 4, 2006) (reducing

EAJA award in light of finding that "representation by multiple counsel resulted in duplicative work and excessive billing for time spent by counsel conferring with each other"). *Cf. Commissioner v. Jean*, 496 U.S. 154, 163 (1990) (emphasizing that "a district court will always retain substantial discretion in fixing the amount of an EAJA award. Exorbitant, unfounded, or procedurally defective fee applications . . . are matters that the district court can recognize and discount."). Thus, one district court recently approved an EAJA award that included legal assistant fees at a rate of $75 per hour but reduced the number of hours covered by the award in light of its determination that "much of the time billed may not have been entirely productive." *See Dudelson v. Barnhart*, No. 03 Civ. 7734 (RCC) (FM), 2007 U.S. Dist. LEXIS 19124 (S.D.N.Y. Mar. 20, 2007).

III. Certiorari Is Warranted To Review This Important Question.

As outlined above, *see supra* at 4-5, the Federal Circuit's holding in this case that prevailing parties under EAJA may only be awarded fees for legal assistants at cost is inconsistent with the realities of modern law practice, which now relies heavily on legal assistants – whose time is billed to clients at prevailing market rates – to improve both the cost and quality of legal services delivered to clients. By providing an incentive for attorneys to handle more aspects of a case themselves, rather than delegating work to legal assistants, the decision below threatens to increase the costs of legal services to clients and, ultimately, reimbursements under EAJA. *See supra* at 7.

Because the many cases awarding EAJA fees involve a wide variety of subject matters,[12] the potential effects of the

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[12] *See, e.g., Former Employees of Tyco Elecs., Fiber Optics Div. v. United States Dep't of Labor*, 350 F. Supp. 2d 1075, 1093 (C.I.T. 2004) (awarding EAJA fees in NAFTA trade adjustment assistance case); *Masonry Masters, Inc. v. Nelson*, 105 F.3d 708 (D.C. Cir. 1997) (EAJA award in immigration case); *Jazz Photo*

decision below alone would warrant certiorari. However, certiorari is particularly warranted given the Federal Circuit's outsized role in EAJA cases. As the petition for certiorari explains (at 11-12), the Federal Circuit has appellate jurisdiction not only over – as here – federal administrative tribunals, but also over cases from Article I courts such as the Court of Federal Claims. Unless the decision below is reversed, it will thus have precedential effect in all of these tribunals and courts, prompting them to award fees for legal assistants only at cost notwithstanding the widespread and well-accepted practice of billing them to clients at market rates.

CONCLUSION

For the foregoing reasons, as well as those set forth in the petition, certiorari should be granted.

Corp. v. United States, No. 04-00494, 2007 Ct. Intl. Trade LEXIS 107 (C.I.T. July 16, 2007) (partial EAJA award in case involving customs protest); *Brungardt v. Comm'r of Social Security*, No. 06-15681, 2007 U.S. App. LEXIS 11217 (11th Cir. May 9, 2007) (EAJA award in Social Security case); *Healey v. Leavitt*, 485 F.3d 63, 65 (2d Cir. 2007) (EAJA award in class action arising out of termination or reduction of home health care services to elderly and disabled); *Joyce v. Potter*, No. 5:06-cv-339-Oc-10GRJ, 2007 U.S. Dist. LEXIS 51115 (M.D. Fla. July 16, 2007) (EAJA award in case by U.S. Postal Service contractor involving due process violations); *Agosto v. Nicholson*, No. 04-0431(E), 2007 U.S. App. Vet. Claims LEXIS 1121 (Vet. App. July 13, 2007) (EAJA award in veteran's case); *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. Smith*, 491 F. Supp. 2d 980 (D. Or. May 17, 2007) (EAJA award in environmental case); *In re Donovan*, 877 F.2d 982, 992-93 (D.C. Cir. 1989) (per curiam) (EAJA award to subject of independent counsel investigation).

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